Hobart, 36 FEP Cases 1149,1152 (10th Cir., 1996) and *Martin v. Nannie and the Newborns*, 68 FEP Cases 235, 236 (W.D. Okla., 1994)) but may shift to a consideration of others in the workplace when an overt policy of discrimination is alleged to impact on a category of employes (*see, e.g., Kennedy v. D.C.*, 65 FEP Cases 1615, 1617 (D.C. Cir., 1994), involving review of a grooming code.)

In *Watkins v. DILHR,* 69 Wis. 2d 782, 12 FEP Cases 816 (1975), it had been concluded that the complainant had been discriminated against by her state agency employer on the basis of her race when she was denied a requested transfer to a different position in 1969 and in 1970. The Wisconsin Supreme Court ruled that the controversy was not moot even though the complainant had been transferred to the position she sought in 1971 (which was after she had filed her complaint of discrimination). The basis for the Court's ruling was that, since the complainant remained an employee of DILHR, an order could be entered which would have the practical, legal effect of requiring that the complainant be considered for all future transfers on the basis of her qualifications and ability, and without regard to her race; that the complainant was entitled, having suffered frustration in her employment over an extended period of time, to know whether or not this was due to race discrimination; and that it would foster, not eliminate, discrimination if employers in such situations could escape liability by simply waiting until enforcement proceedings were begun and then remedying the subject adverse action.

In a case filed under the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act of 1973, the U.S. Court of the Appeals for the Sixth Circuit addressed a question similar to the one presented here, i.e., whether a case which presented an issue of handicap accommodation relating to the eligibility of a student for interscholastic athletic competition would survive the student's graduation from high school. *McPherson v. Mich. H.S. Athletic Assn.,* 7 AD Cases 77 (6th Cir. 1997). The court stated as follows in deciding this question:

> Under Article III of the Constitution, our jurisdiction extends only to actual cases and controversies. We have no power to adjudicate disputes which are moot. *Crane v. Indiana High Sch. Athletic Ass'n*, 975 F.2d

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ORDER

Respondent's motion to dismiss is granted.

Dated: April 8, 1998

STATE PERSONNEL COMMISSION

LAURIE R. McCALLUM, Chairperson

DONALD R. MURPHY, Commissioner

JUDY M. ROGERS, Commissioner

LRM
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Parties:

Carol A. Burns
921 Perry Center Road
Mount Horeb, WI 53572

Gordon Derzon
Superintendent, UWHCA
600 Highland Ave.
Madison WI 53792-0001

NOTICE
OF RIGHT OF PARTIES TO PETITION FOR REHEARING AND JUDICIAL REVIEW OF AN ADVERSE DECISION BY THE PERSONNEL COMMISSION

Petition for Rehearing. Any person aggrieved by a final order (except an order arising from an arbitration conducted pursuant to §230.44(4)(bm), Wis. Stats.) may, within 20 days after service of the order, file a written petition with the Commission for rehearing. Unless the Commission's order was served personally, service occurred on the date of mailing as set forth in the attached affidavit of mailing. The petition for rehearing must specify the grounds for the relief sought and supporting authorities. Copies shall be served on all parties of record. See §227.49, Wis. Stats., for procedural details regarding petitions for rehearing.

Petition for Judicial Review. Any person aggrieved by a decision is entitled to judicial review thereof. The petition for judicial review must be filed in the appropriate circuit court as provided in §227.53(1)(a)3, Wis. Stats., and a copy of the petition must be served on the Commission pursuant to §227.53(1)(a)1, Wis. Stats. The petition must identify the Wisconsin Personnel Commission as respondent. The petition for judicial review must be

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STATE OF WISCONSIN PERSONNEL COMMISSION

DENNIS A. ALLEN,
Complainant,

v.

Secretary, DEPARTMENT OF CORRECTIONS,
Respondent.

Case Nos. 95-0034-PC-ER, 95-0057-PC-ER, 95-0071-PC-ER, 95-0110-PC-ER, 95-0118-PC-ER, 95-0125-PC-ER, 96-0001-PC-ER, 96-0007-PC-ER, & 96-0036-PC-ER

RULING ON COMPLAINANT'S APPEAL OF THE NO PROBABLE CAUSE PORTIONS OF THE INITIAL DETERMINATION

All the above-noted cases were combined for discussion in one Initial Determination (ID) mailed to the parties on August 26, 1997. The complainant failed to file a timely appeal of the No Probable Cause (NPC) portions of the ID. The parties filed written arguments as to whether complainant should be allowed to proceed to hearing on the NPC portions of the ID, with the final argument received on October 8, 1997.

FINDINGS OF FACT

1. The ID was mailed to the parties on August 26, 1997, with cover letters warning that an appeal of the NPC portions of the ID must be filed in writing "within 30 days of the date of this letter" as measured by the Commission's receipt of the written appeal. Accordingly, complainant's written appeal was due at the Commission's office by 4:30 p.m. on September 26, 1997. The Commission did not receive complainant's appeal until September 29, 1997.

2. Complainant's appeal letter was dated September 25, 1997, one day prior to the due date. The envelope in which the appeal was mailed contained a postmark of September 25, 1997, indicating the letter was mailed from Green Bay where complainant lives. Complainant has presented no evidence to show it is reasonable to mail a letter from Green Bay and to expect delivery in Madison the following day.